IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

MFA.No. 352 of 2003()

OPMV.597/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA
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APPELLANT: PETITIONERS
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1. GANGADARAN NAIR S/O. GOVINDAN,
AGED 56 YEARS, KAKKANASSERIL HOUSE,
RAMAKALMEDU P.O., IDUKKI DISTRICT.

2. THANKAMMA W/O. GANGADHARAN,
AGED 51 YEARS, KAKKANASSERIL HOUSE,
RAMAKALMEDU PO., IDUKKI DISTRICT (DIED)

3. K.G.RAJAN NAIR S/O. GANGADARAN,
LAKSHMI MANDIRAM, RAMAKALMEDU P.O.
IDUKKI DISTRICT.

4. RADHAMANIYAMMA W/O. SIKHAPALAN,
BINU BHAVAN, MUHAMMA P.O., ALAPPUZHA.

5. OMANA W/O. MURALIDHARAN
KAKKANASSERIL HOUSE, RAMAKALMEDU P.O.

6. VIJAYKUMAR S/O. GANGADARAN NAIR,
KAKKANASSERIL HOUSE, RAMAKALMEDU P.O.

7. K.G.SATHYAN S/O. GANGADARAN NAIR,
KAKKANASSERIL HOUSE, RAMAKALMEDU P.O.

8. SHOBANA W/O. LATE VIJAYKUMAR,
MANESH BHAVAN, RAMAKALMEDU P.O.

9. VINOD KUMAR S/O. GANGADARAN NAIR,
KAKKANASSERIL HOUSE, RAMAKALMEDU P.O.

BY ADV. SRI.V.M.KURIAN(JR.)
SRI.SOJAN MICHEAL

MFA 352/2003

RESPONDENTS: RESPONDENTS
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1. PRASAD S/O. RAMAN, THONIKUZHI'
RAMAKALMEDU P.O., IDUKKI DISTRICT
(DRIVER)

2. M.H.MUHAMMED ALI, NO.295, MAIN ROAD,
KAMBAM, TAMILNADU (OWNER)

3. THE BRANCH MANAGER, NEW INDIA ASSURANCE
CO.LTD., CENTRAL JUNCTION, KATAPPANA.

BY ADV. SRI.M.JACOB MURICKAN
SRI.A.K.RAMACHANDRAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC, JJ.
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M.F.A. NO. 352 OF 2003
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Dated this the 20th day of March, 2007

J U D G M E N T

Antony Dominic, J.

The parents of late Sasidharan, who was a driver by occupation and died in an accident on 11/6/95, are the appellants. The appellants filed claim petition, contending that they are entitled to a total compensation of Rs.5,06,000/-, but however limited the same to Rs.4,00,000/-. The Tribunal rejected the contention of the Insurance Company that they are not liable to pay compensation and awarded a total compensation of Rs.82,000/- with 9% till realisation. It is aggrieved by the said award, the appellants have come up in appeal.

2. It is seen that the monthly income of the deceased was taken as Rs.1,500/- per month. But however, the Tribunal reduced 2/3rd of the same while quantifying the dependency benefit. That apart, the Tribunal has also taken 10 as the

multiplier as against the correct multiplier of 11.

3. According to us, the monthly income of the deceased ought to have been fixed at Rs.1,000/- only and the permissible deduction was only 1/3rd from the total income. On this basis, adopting multiplier as 11, we are inclined to re-fix the total compensation towards dependency at Rs.1,32,000/- as against Rs.60,000/- already awarded. Thus, we award an additional compensation of Rs.72,000/- in favour of the appellants. The additional compensation will also carry interest at the rate of 7% from the date of presentation of the petition till date of realisation.

4. However, taking into account the law as laid down by the Supreme Court in **United India Insurance Co. Ltd v. Tilak Singh {2006(2) KLT 884 (SC)}**, it being an Act Policy, we cannot held the Insurance Company liable for the additional compensation awarded by us since he is also a gratuitous passenger. In the aforesaid situation, we direct that the

respondents 1 and 2 herein, being owner and driver of the offending vehicle, will be liable for payment of the additional compensation.

The appeal stands disposed of in the above terms.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp